

**Comments of SGA on the AT&T Acquisition of T-Mobile USA**  
**Federal Communications Commission**  
**May 13, 2011**

The Songwriters Guild of America (“SGA”) believes that content creators and wireless services consumers – both – would benefit from this proposed merger, and that therefore the transaction is in the public interest.

SGA is the nation’s oldest and largest organization run exclusively by and for songwriters, lyricists, composers and other music creators (“songwriters” or “creators”) with more than 5,000 members nationwide and over seventy-five years of advocating for songwriters’ rights. It is a voluntary association of songwriters and the estates of deceased members. SGA provides a variety of services to members, including contract advice, copyright renewal and termination filings, and royalty collection and auditing to ensure that members receive proper compensation for their creative efforts. SGA’s efforts on behalf of all U.S. songwriters include advocacy before regulatory agencies and Congress, and participation as *amicus* in litigation of significance to the creators of the American canon of popular music.

SGA bases its favorable comments regarding this merger on an analysis of the potential benefits and potential harms to songwriters, to music consumers, and to consumers in general. In summary, the benefits to all interested parties are significant and clear, while the harms are uncertain and hypothetical, at best. As such, the merger should proceed.

**Benefits of the Merger.**

AT&T has supported business practices and government policies that permit communications service providers to ensure that the content transmitted over their networks is secure and protected. T-Mobile has not done so. Given the high value that wireless and broadband consumers place on access to music and other content, the business plan of the acquiring party is critical to an analysis of the transaction’s effect on consumers. Indeed, consumers are buying smart phones in record numbers not to make phone calls, but to receive and share content. If the primary purpose behind consumer demand for smart phones is content, and if the acquiring party in this transaction has a progressive policy on content protection, then content creators (such as songwriters) and content consumers (most smart phone owners) will clearly benefit.

AT&T and T-Mobile are not simply *suppliers* of wireless service to consumers, they are also *distributors* of intellectual property (such as music) to the public. As a result, the creators of music (like songwriters) are “suppliers” to these distributors, and are equally interested parties to this transaction. “Music suppliers” do not have a choice of who

distributes our works: if we did, we would choose broadband and wireless distributors that protect the integrity of our product, because when intellectual property is protected, then artistic and business innovation results. Pro-innovation results are inherently “pro-competitive,” according to the DOJ and FTC Merger Guidelines, and therefore are in the public interest.

But at this rare moment, songwriters do have a “choice:” when a wireless and broadband provider that supports content protection (AT&T) proposes to acquire a carrier that has not recognized the value of such protection (T-Mobile), we choose enthusiastically to support the transaction. The result of the transaction will be good for the protection of intellectual property, will strengthen the economic incentives for creators to innovate and be compensated for their efforts, and as a result will promote efficiency and competition in the market for music, movies, games, and related entertainment.

But this result is not merely good for suppliers of content, it is also good for the ultimate consumers of this content, some of whom will be obtaining our music on Smartphones through subscription plans offered by the two merger parties. When consumers obtain legally authorized content, they experience the artistic work at its highest technical quality – as pirated material is often technologically degraded. In addition, pirated works can contain viruses, spyware, malware, and other harmful material that properly licensed works do not. Music of the highest quality, without harmful material, is undoubtedly in the interest of consumers.

### **Questions About the Merger.**

There have been numerous criticisms of the merger, but they all depend upon on specific factual assumptions that are far from certain. It is not preordained that Sprint will go bankrupt or that its market share will freeze at current levels if the merger is approved, therefore the charges of a “duopoly” are speculative. The data on wireless subscription prices after the merger closes are conflicting and therefore inconclusive. Allegations that a wireless carrier would restrict access to content if it had large market are unrealistic, given the strong consumer demand for access to more content, not less.

This transaction needs to be evaluated in context, not in a vacuum. T-Mobile’s German parent has previously expressed an interest in selling T-Mobile USA, so the question is not whether the company should be sold, but what are the options for its disposition? If T-Mobile USA were sold to another wireless carrier without strong content protection policies, then content creators and smart phone consumers would suffer, and the deal might then fall out of the public interest. If T-Mobile were broken up into small parts and sold to a variety of parties, then a similar lack of content protection would result.

### **Conclusion**

The one practical option on the table that serves the public interest is if T-Mobile were sold to a wireless company that has strong content protection policies and programs. Given the centrality of consumer demand for content to the current wireless market, ***content protection is not a secondary issue, it is a key issue to the public interest analysis.*** AT&T is the only potential acquirer of T-Mobile that has strong content

protection policies and practices. As such, its proposed acquisition of T-Mobile USA is in the public interest and should be approved.

Respectfully submitted.

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The Songwriters Guild of America